GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute : Industrial Dispute between the workmen and the management of Mangalore City Municipality, Mangalore.

Award of the Labour Commissioner, Bangalore published.

Read the following papers :

(1) Letter No. A/ID-20/72-73, dated 27th December 1972 from Sri B. Hanumanthaiah, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE

Dated 27th December , 1972.

Reference (ID) (LCM) No. 20 of 1971

Present :

B. Hanumanthaiah, B.SC.,LL.B., Presiding Officer.

Between :

The workmen, represented by the General Secretary, Municipal Employees' Union, Mangalore. *I Party*

And

The Management of Mangalore City Municipality, Mangalore. *II Party*

AWARD

The Government of Mysore, being of opinion that an industrial dispute exists between the workmen and the Management of Mangalore City Municipality, Mangalore, referred the said dispute to this Court in exercise of the

powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, for adjudication, by Order No. FCL 358 LLD 71, dated 9th August, 1971. The Points of dispute as specified in the order of reference are the following :

> "Is the Management of Mangalore City Municipality, Mangalore, justified in terminating the services of Sri K. Kunhiraman, Lorry Driver in the Public Health Department ?
>
> If not, to what relief the driver is entitled ?

2. The I Party workman is represented by the General Secretary, Municipal Employees' Union, Mangalore and the II Party is the Management of Mangalore City Municipality, Mangalore.

3. The dispute is raised in respect of the order of dismissal of the workman Sri K. Kunhiraman and it is raised by the Municipal Employees' Union of which the said K. Kunhiraman is a member. The I Party has filed the claim statement stating as follows :

Sri K. Kunhiraman was working as a driver of Public Health Vehicles under the II Party Management and he was in employment for 17 years and his services were terminated illegally by an order dated 29th June 1970. He was kept under suspension by the Municipal Health Officer by his order dated 13th May 1969 and the suspension period continued upto 29th June 1970 and the Health Officer had no authority to keep the I Party workman under suspension for a period exceeding 3 months. The enquiry held by the II Party and the charges contained in the charge sheet-*cum*-show cause notice dated 11th June 1969 are frivolous and baseless. The explanation given by the worker was summarily dismissed by the Municipal Health Officer. The enquiry is vitiated and is opposed to the principles of natural justice and equity, in as much as it was conducted by the very same Municipal Health Officer who claims to have detected the alleged misconduct and who passed the

order of suspension. The I Party was not allowed to cross-examine the witnesses for the management. No list of witnesses to be examined by the management was furnished to the I Party workman before the enquiry and he was not allowed to cross-examine the witnesses. The I Party was not allowed to examine his defence witnesses. The enquiry officer passed a provisional dismissal order on 21st April 1970. The findings are fraught with unfair labour practice and victimisation. The punishment is grossly disproportionate, unconscionable and no reasonable man would come to the said conclusion against the worker even if the alleged charges had been proved. That the enquiry is liable to be set aside as it is improper, unjust, illegal and opposed to the principles of natural justice.

4. The II Party has filed the counter statement stating that the I Party is not entitled to seek relief in his Court because he has preferred an appeal before the Director of Health and Family Planning Services against the order passed by the Municipal Health Officer. It is pleaded that the Health Officer is the Head of the Public Health Establishment and he is competent to hold the enquiry and pass orders in all cases of misconduct and other charges. The suspension of the worker beyond 3 months was found necessary and the Director of Health and Family Planning Services had been requested to sanction the extension of the period of suspension, and there is no illegality as alleged by the I Party. It is stated that every opportunity was given to the workman and the enquiry was held in the presence of the worker. It is denied that the workman was not allowed to cross-examine the management witnesses. It is denied that the findings of the second party are fraught with unfair labour practice and victimisation. It is also prayed that the second party proposes to adduce evidence and the Court may confirm the order of dismissal and be pleased to dismiss the claim of the I Party with costs.

5. On these pleadings the following additional issues have been framed :

1) Whether the first party workman having filed an appeal before the Director of Health and Family Planning Services in Mysore at Bangalore against his dismissal order was incompetent to raise an industrial dispute on the same cause of action as regards his dismissal from service ?

(2) Whether the domestic enquiry held against the first party workman is vitiated by any of the grounds mentioned in para 5 clauses (a) and (b) of the claim statement ?

(3) Whether the suspension of the first party workman for a period exceeding three months is without jurisdiction as pleaded in para 3 (c) of the claim statement, and as such the dismissal order is vitiated ?

(4) Whether the provisional dismissal order dated 21st April 1970 which was confirmed on 29th June 1970 with retrospective effect from the date of suspension, that is 13th May 1969 is contrary to law and to the existing service conditions ?

(5) Whether the charges levelled against the first party are proved ?

(6) Whether the punishment of dismissal is grossly disproportionate, unconscionable and not reasonable, If so, what will be its effect on this reference ?

(7) What Award ?

6. The Municipal Health Officer, Dr. C. R. Krishna Murthy is examined as M.W. 1. He has stated that on 13th May 1959 he received a report from the Sanitary Inspector Sri K. S. Ahmed against the worker Kunhiraman driver of vehicle No. MYX 5333 complaining that the vehicle was involved in an accident and the same was not reported by the driver even after 3 days of the occurence of the accident. That he made preliminary enquiries and thereafter issued

the showcause notice Ex. M-2 dated 13th May 1969. That on 11th June 1969 a memo specifying the charges as per Ex. M-3 was issued and the worker submitted his explanation as per Ex. M-4 dated 19th June 1969. That the notice of enquiry Ex. M-5 dated 31st July 1969 was served on the worker on 6th August 1969 and that on 11th August 1969 he recorded the statement of the worker. Further he stated that on 24th September 1969 he examined the Sanitary Maistry Bejmi Sequeira, K. S. Ahmed, Sanitary Inspector, and the enquiry was held in the presence of the worker. He has stated that he made a preliminary order as per Ex. M-11 and thereafter he passed the final order as per Ex. M-13 terminating the services of the driver Sri K. Kunhiraman.

7. It is admitted by Dr. C. R. Krishna Murthy, M.W. 1, that one of the charges as per Ex. M-3 is that on 10th May 1969 at about 5 P.M. the driver drove the public health vehicle MYX 5333 recklessly near Kadri market and the driver has denied the charge in his explanation that he was driving the vehicle recklessly. He stated that none of the witnesses spoke to the fact of the first party workman driving the vehicle recklessly near Kadri Market and met with an accident. It is also admitted by him that the delinquent worker was examined first on 11th August 1969 before the examination of the witnesses of the management and that he has cross-examined him. It is admitted that the driver was kept under suspension for a period exceeding 3 months and the sanction to keep the worker under suspension beyond 3 months has not been received from the Director of Health and Family Planning Services. The Health Officer was examined in this Court on 15th March 1972. Subsequently on 20th April 1972 the second party filed a memo praying that they may be permitted to adduce relevant evidence regarding the charges framed against the I Party at the time of domestic enquiry. The second party is permitted to adduce evidence on merits also.

8. Exhibit M-3 is the memo wherein the charges are mentioned. The three charges mentioned there are:

(i) That on 10th May 1969 at about 5 P.M. the driver drove the public health lorry MYX 5333 recklessly near the Kadri Market and met with an accident.

(ii) That he has deliberately did not report the fact to the Municipal Health Officer inspite of specific instructions.

(iii) That he has neglected his duty..

It is admitted by the Municipal Health Officer that none of the witnesses spoke to the fact that the first party workman was driving the vehicle recklessly near Kadri Market on 10th May 1969 at about 5 P.M. He has also admitted that the accused driver has reported the matter to the Sanitary Inspector Sri K. S. Ahmed and the Sanitary Inspector directed him to report the matter to the office. Thus it is admitted that no evidence was available before the enquiry officer with respect to the charge No. 1 but still the enquiry officer has found that the charge No. 1 is proved. He has also found that the worker was guilty of negligence and this finding is based on the evidence that the workman was driving the vehicle recklessly. Though in fact the Sanitary Inspector has stated that the driver came to him and reported the matter, it is held by the enquiry officer that the driver was guilty of one of the charge because he did not deliberately report the fact to the Health Officer inspite of the specific instructions. He has not referred to the instructions said to have been issued in the order. Of course the Health Officer has stated in his deposition before Court that the instructions are issued in writing and the copies of such instructions are preserved, but they are not produced before the Court. Therefore it is clear that at the time of making the order after the enquiry as per Ex. M-11 there was no material or evidence available to the Health Officer to come to the conclusion that the charges have been proved. Therefore, I find that the decision reached by the Health Officer is illegal and perverse and the enquiry is not properly held. This is my finding on issue No. 2.

9. The 5th issue is whether the charges levelled against the I Party are proved. I have earlier referred to Ex. M-3 wherein the charges are specified. In the preliminary order Ex. M-11 it is mentioned that the enquiry is held on the 3 charges specified in Ex. M-3. In para 3 of the preliminary order the enquiry officer has referred to a charge memo issued on 26th June 1968. There are 4 charges. In respect of those 4 charges the enquiry officer, *i.e.*, the Health Officer has recorded his findings though no enquiry was held by him. Again, in para 5 of the order he has referred to another charge memo dated 26th June 1968 wherein 5 charges are stated. In para 6 of the order it is stated that the previous Health Officer conducted the enquiry and has given a finding that a newly replaced clutch plate and top gear shaft have been broken and has held that this was due to the negligence of driver and on that basis even though no enquiry was held by him the enquiry officer held that the charges are proved. During the course of arguments the learned representative for the workman urged that in the present case the enquiry is held only in respect of the 3 charges mentioned in the memo Ex. M-3 and therefore the Court cannot take into consideration the evidence let in by the management with respect to the charge regarding the transportation of buffaloes in vehicle MYX 5471 on 12th August 1967. It is also clear that no enquiry is held by the present enquiry officer with respect to those charges Hence I find that the contention raised on behalf of the I Party workman is valid. I have also read the written statement filed by the II Party. It is not specifically stated that the management may be permitted to adduce evidence in respect of the charges mentioned in charge memo dated 26th June 1968. In para 13 it is stated that the management *i.e.*, the second party proposes to adduce evidence. It can only be held that the management has prayed for permission to adduce evidence in respect of charges mentioned in Ex M-3. Even in the memo filed on 21st April 1972 it is merely stated that the second party may be permitted to adduce relevant evidence regarding the charges framed against the I Party at the time of the domestic enquiry. Therefore it

is clear that the II Party has prayed for permission to adduce evidence with respect to the charges framed under Ex. M-3.

10. Further, since the management has let in evidence with respect to the charge relating to the transportation of buffaloes I find that it is reasonable to give a finding on that charge also. That circumstances may be taken into consideration if it is held that the charges in the memo Ex. M-3 are proved. In respect of the charges levelled relating to the transportation of buffaloes the following witnesses have been examined, M.W. 2, Sri H. Udaya Shankar Prabhu, M.W. 3 Sri G. Mohan Shenoy, M.W. 6 Sri K. G. Panickar. M.W. 6 stated that he is a member of the Mangalore City Municipal Council since the last 15 years and that he might have written a letter as per Ex. M-15 dated 26th September 1967. Thus he states that he has intimated as per Ex. M-15 that he came to know from Sri H. Udayashankar Prabhu and Sri G. Mohan Shenoy that buffalloes were being transported from Moodbidiri on 12th August 1967.

11. M.W. 2 Sri H. Udaya Shankar Prabhu stated that on 12th August 1967 at about 1–45 P.M. he saw lorry No. MYX 5471 and there were 4—5 buffaloes and some workers in the lorry. Further he has stated that the lorry stopped near Vamanjoor and there the heads of cattle were being unloaded and they informed the matter to Dr. K. C. Panickar. He also stated that they have sent a letter to the Health Officer as per Ex. M-14. M.W. 3 Sri G. Mohan Shenoy also spoke to the effect that on 12th August 1967 he saw lorry No. MYX 5471 and there were buffaloes in the lorry. Thus from their evidence it is made out that buffaloes were being transported in the lorry MYX 5471. I find that M.W. 2 and M.W. 3 are independent witnesses and their evidence is reliable. From their evidence it is made out that buffaloes were being transported in the lorry MYX 5471 belonging to the II Party but they do not say who was the driver. They have also stated that they have not been enquired in the presence of the I Party workman by the health Officer. Since M.W. 2 and M.W. 3 do not say that it is the I Party workman Sri K. Kunhiraman who was

driving the vehicle at the relevant time, I find that the evidence is not sufficient to hold that it is the I Party workman K. Kunhiraman who was transporting the buffalloes. Therefore, I find that it is not proved that the I Party has in the Municipal vehicle MYX 5471 has transported buffaloes.

12. Now I will examine the evidence with respect to the charges in the memo Ex. M-3. The first charge is that the driver was driving the vehicle MYX 5333 recklessly near Kadri Market and met with an accident. The second charge is that he deliberately did not report the fact to the Municipal Health Officer and the third charge is that he has neglected his duties. The witnesses examined by the management are M.W. 1, the Health Officer, M.W. 4 Sri K. S. Ahmed, Sanitary Inspector and M.W. 5 Benjmin Sequeira, Sanitary Maistry. M.W. 5 merely states that on 10th May 1969 he came to know from the workers that the lorry driven by the I Party met with an accident. He does not say how the accident happened. M.W. 4 states that the lorry MYX 5333 met with an accident on 10th May 1969 and the driver came and intimated him at 9 P.M. in his house. Further he stated that he asked the driver to inform the Assistant Health Officer and also to report to the Health Officer. Further he stated that the next morning he took the driver to the spot and he saw the lorry and the I Party worker had not made any report to the Health Officer. He has given his report Ex. M-1 on 13th May 1969. He also does not say how the accident happened. M.W. 1 also does not say how the accident happened. The driver M.W. 1 has stated as follows with respect to the accident:

"I was driving the vehicle from Mudushedde towards Mangalore and when I was approaching the Kadri Market, where 3 roads meet and saw a parked lorry on the leftside. As I was passing the lorry, a person came suddenly across the lorry and was injured. The person was hit by the left side angular of the lorry. As the person suddenly crossed over, I applied brakes. I got that person admitted in the Government Wenlock Hospital. He was not seriously

injured and he was in the hospital for one day. After returning from the Hospital I intimated my immediate superior M.W. 4, on the very day itself. I was not aware of any rule which specifies that I should report the matter to the Health Officer."

Thus the explanation offered by the driver is that he was not able to see the person who suddenly crossed the road since a lorry had been parked on the left side from which side the other person came to the road. In these circumstances I find that the explanation offered by the driver is not unreasonable. There is no evidence to show that he was driving the vehicle recklessly or with any speed. Therefore, I find that the first charge in the charge memo Ex. M-3 is not proved.

13. It is admitted by M.W. 4 that immediately on the same day the driver came and reported the matter to him in his house and he asked him to report the matter to the Assistant Health Officer Sri N. S. Giri. There is nothing to show that he has deliberately failed to intimate that there was an accident to his superiors. The Health Officer M.W. 1 of course stated that instructions had been issued in writing that the matter must be reported to the Health Officer, but the instructions are not produced before Court. In his statement in the enquiry Ex. M-9 the Sanitary Inspector has stated as follows :

"ಯಾವುದಕ್ಕೂ ನಾಳೆ ನೋಡುವಾ ಮತ್ತು ಈ ವಿಷಯವನ್ನು ಶ್ರೀ ಯನ್. ಎಸ್. ಗಿರಿಗಳಿಗೂ ತಿಳಿಸಿ ಬಿಡು ಎಂಬುದಾಗಿ ನಾನು ಹೇಳಿದೆನು."

His statement shows that it was usual for the driver to report the matter to the Sanitary Inspector who is his immediate superior. Therefore, I find that there is no material to hold that the I Party driver Kunhiraman deliberately failed to report the fact to the Health Officer inspite of specific instructions and charge No. 2 is also not proved. In Ex. M-11 it is stated by the Health Officer that the third charge arises out of the first two charges, and as a result he holds that this charge as proved. Therefore the only negligence alleged against him as mentioned in charge No. 3 is

that he neglected to intimate about the accident to the Health Officer. In view of my finding on charge No. 2, I find that the third charge is also not proved. Therefore, I hold that the II Party has not proved the charges levelled against the I Party in Ex. M-3. This is my finding on issue No. 5.

14. The first additional issue is :

> "Whether the first party workman having filed an appeal before the Director of Health and Family Planning Services in Mysore at Bangalore against his dismissal order was incompetent to raise an industrial dispute on the same cause of action as regards his dismissal from service ?"

The mere fact that an appeal has been filed by the worker does not take away his right to agitate the same matter before this Court. Hence, I find that the I Party is not incompetent to raise the dispute. This is my finding on issue No. 1.

15. Issue No. 3 : It is admitted that the I Party workman had been kept under suspension for a period exceeding 3 months. M.W. 1 has stated that he requested the Dircetor of Health and Family Planning Services to grant extension of time to complete the enquiry and for sanction to keep the driver under suspension for a further period. Regulation No. 30 of the Public Health Regulations reads as follows :

> "The Health Officer may suspend any member of the Public Health establishment of a local authority pending enquiry into his conduct for a period not exceeding three months ; provided that in exceptional cases when the inquiry cannot be completed within three months from the date of suspension, the member of the Public Health Establishment may be suspended for a further period not exceeding three months with the previous sanction of the appellate authority referred to in Regulation 34(i)."

In the present case the order of suspension is passed under Regulation 30 of the Public Health Regulations, and it is clear that the Director of Health and Family Planning Services in Mysore, Bangalore, has not given sanction to the order of suspension made by the Municipal Health Officer. Therefore, I find that the order keeping the driver K. Kunhiraman under suspension for a period exceeding 3 months is illegal. The second part of issue No. 3 is whether the order of dismissal is vitiated because the order keeping the driver under suspension for a period exceeding 3 months is illegal.

In A.I.R. 1966 S. C. Page 951 it is laid down by their Lordships as follows :—

> "An order of dismissal with retrospective effect is in substance an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming the second part of the order mentioning that dismissal would operate retrospectively is invalid, there is no reason why the first part of the order starting that the appellant is dismissed, should not be given the fullest effect. The Court cannot pass a new order of dismissal but surely it can give effect to the valid part of the order. (1957) 61 Cal WN 880 AIR 161 Cal 626, Overruled : AIR 1954 Cal 340, Explained."

It is true that the order of dismissal could have been given effect to from the date of the order and an order could have been passed that for the period for which the driver was kept under suspension, he should be paid his salary because the two parts of the order are severable. Therefore I find that the order of dismissal is not vitiated merely because the order keeping the driver under suspension for a period exceeding 3 months is illegal.

16. I have now found on issue No. 5 that the charges levelled against the I Party are not proved and I have also

found that the domestic enquiry held is not proper and the order of dismissal is illegal. Therefore, I find that it is not necessary to give any finding on issue Nos. 4 and 6. The 7th issue is as to ' what Award '. In view of my finding on issue Nos. 2 and 5, I find that the order of dismissal passed against the workman is illegal and he is entitled to reinstatement.

17. In the result, I pass an award holding that the order of dismissal of the driver Sri K. Kunhiraman is not justified and setting aside the same. The second party shall reinstate the driver in service with effect from the date of order of suspension, *viz.*, 13th May 1969 with all consequential benefits. It is lawful for the second party to deduct the amount that has been paid to the driver Sri K. Kunhiraman while he was under suspension, while paying backwages. The parties shall bear their own costs.

Mangalore,
Dated : 27th December, 1972.

B HANUMANTHAIAH,
Presiding Officer.
Labour Court, Mangalore.

ORDER

Bangalore dated 19th January 1973

S.O. 593.—WHEREAS, by State Government Order No. FCL 358 LLD 71, dated 27th December 1972 the Industrial Dispute between the workmen and the management of Mangalore City Municipality, Mangalore was referred to the Labour Court, Mangalore for adjudication.

AND, WHEREAS, the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 296 LLA 72]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,

Under Secretary to Government,
Food, Civil Supplies and Labour Department.